

SIERRA CLUB

IBLA 80-854

Decided March 12, 1981

Appeal from a decision of the California State Office, Bureau of Land Management, denying the protest of the State Director's failure to designate unit CA-010-040 as a wilderness study area. 8500 (C-943.1).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

2. Federal Land Policy and Management Act of 1976: Wilderness --
Rules of Practice: Appeals: Statement of Reasons

Where the Bureau of Land Management fails to designate an inventory unit as a Wilderness Study Area (WSA) because, inter alia, it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation, and thereafter a protest and appeal are filed which contain no affirmative allegations of facts or provide no legal arguments sufficient to compel a reversal, BLM's decision will be affirmed.

APPEARANCES: Robert E. Griffin, Sierra Club, Santa Lucia Chapter, San Luis Obispo, California, for appellant; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Sierra Club, Santa Lucia Chapter, appeals the decision of the State Director, California State Office, Bureau of Land Management (BLM), dated June 25, 1980, denying the protest of the State Director's failure to designate unit CA-010-040 as a Wilderness Study Area (WSA). A final intensive inventory report issued by the State Director in December 1979 listed the subject unit as one of 230 intensive inventory units not meeting the criteria imposed by section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), and by section 2(c) of the Wilderness Act, 16 U.S.C. § 1131 (1976). 45 FR 1457 (Jan. 7, 1980). Appellant protested the State Director's findings with respect to unit CA-010-040 by letter of February 4, 1980.

[1] Section 603(a) of FLPMA directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of FLPMA as having wilderness characteristics described in the Wilderness Act of September 3, 1964. From time to time thereafter, the Secretary is to report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness review of the public lands pursuant to section 603(a) of FLPMA has been divided into three phases by BLM: Inventory, study, and reporting. The issuance by the State Director of his final intensive inventory report marks the conclusion of the inventory phase for those units described therein. Ninety-three units in California and outside the California Desert Conservation Area were designated WSA's in the Director's report. These units will enter the study phase of the review process during which the values, uses, and resources of these lands will be examined through BLM's land use planning system.

Key to an understanding of the inventory phase is the definition of "wilderness," as set forth in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

(c) A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped [sic] Federal land retaining its primeval character and

influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Sierra Club's protest of February 4, 1980, contained the following arguments:

1. The narrative summary describing unit CA-010-040 appearing in the Draft Intensive Inventory listed the unit size as 6,100 acres and omitted a discussion of the unit's opportunities for solitude or a primitive and unconfined type of recreation.
2. The unit exceeds minimum acreage requirements, because the vehicle route which BLM claims bisects the unit into two subunits of substandard size does not meet the definition of a road. In the alternative, if the vehicle route should be found to meet the definition of a road, the unit is of sufficient size as to make practicable its preservation and use in an unimpaired condition.
3. The unit generally appears to have been affected by the forces of nature with the imprint of man's work substantially unnoticeable. Rehabilitation of areas showing man's work is ripe.
4. Outstanding opportunities for solitude and a primitive and unconfined type of recreation exist in the unit. The unit offers diverse and striking scenery, rolling hills, a central canyon, rock outcroppings, mixed chaparral, oak woodland, and digger pine. Sufficient acreage exists to accommodate numerous visitors without impairing solitude.

By letter of June 25, 1980, the State Director responded to Sierra Club's protest with the following reply:

1. The final intensive inventory report lists the unit acreage as 7,192 acres, a figure more accurate than that included in the draft intensive inventory report. No discussion of the opportunities for solitude or recreation appeared in the draft intensive inventory report, because the unit did not meet the minimum acreage requirement of 5,000 acres. A road bisects the unit into two smaller subunits, neither of which meets the size exceptions set forth in the Wilderness Inventory Handbook.

2. A road, for the purpose of the wilderness inventory, is defined as a vehicle route which has been improved and maintained by mechanical means to insure relatively regular and continuous use. The Anderson Canyon Road is, in fact, improved and maintained by mechanical means and receives regular and continuous use as an access route to grazing lands on each side of the range. Protestant's argument that the two subunits resulting from the unit's bisection are of sufficient size as to make practicable their preservation and use in an unimpaired condition cannot be evaluated without supporting information.

3. Field investigations conducted in response to the protest reveal the presence of several roads, primitive vehicle routes, range improvements, and other manmade features. These intrusions degrade the natural character of portions of the unit. If such portions were excluded, the remaining area would be further reduced in size. Highly irregular boundaries would result, making impracticable the unit's preservation and use in an unimpaired condition. The rehabilitation provision of the Wilderness Inventory Handbook may apply to some of the primitive vehicle routes. Other intrusions could not be rehabilitated without power machinery given the level of precipitation in the area and revegetation rates.

4. The final intensive inventory narrative states that the relatively small size of the two parcels, combined with the overall narrow and irregular shape of the entire unit, limits opportunities for both solitude and a primitive and unconfined type of recreation to the point that they are not outstanding. The exclusion of the manmade impacts, identified through field investigations conducted in response to the protest, leaves the two individual roadless areas further reduced in size and more irregular in configuration, thus reconfirming the narrative conclusion that few visitors could be accommodated without impairing opportunities for solitude. Scenic values are considered as supplemental to the primary wilderness inventory criteria of size, roadlessness, naturalness, and outstanding opportunities for solitude or a primitive and unconfined type of recreation, which must be met before an area can be considered for further wilderness study. The area's scenic value is therefore not a determining factor in identifying WSA's.

[2] On the basis of the protest and response set forth above, it appears that unit CA-010-040 was dropped from further wilderness review because it failed to meet the statutory size requirement or any exception thereto and because it offered outstanding opportunities for neither solitude nor a primitive and unconfined type of recreation. In its statement of reasons on appeal, appellant focuses on the size issue but neglects the issue raised by BLM's negative finding as to outstanding opportunities for solitude or a primitive and unconfined type of recreation.

Appellant's statement of reasons offers the following points:

1. Strong public support for designation of unit CA-010-040 as a WSA is evidenced by the instant appeal and by the permanent documentation file.
2. The file indicates that the Anderson Canyon Road was constructed without authorization. Appellant has conducted field trips into the unit and refutes allegations made by the foreman of the La Panza Ranch that the road receives continuous use and regular maintenance. The trespass nature of the road, together with its actual condition and the fact of other grazing alternatives, should work as factors favoring WSA status. ^{1/}
3. The Wilderness Inventory Handbook at p. 12 prescribes criteria applicable to unit CA-010-040 if the Board should find that the Anderson Canyon Road bisects the unit into two areas. These areas are all owned by BLM. Although a convenient access across private land is not now present, this fact should not preclude further study by BLM of this area for wilderness designation.
4. The permanent documentation file supports a finding for WSA designation. The district and staff repeatedly use the size limitation to subjectively detract from the clear evidence that the natural condition of the unit is consistent with wilderness standards as set forth in the law and by regulation.

Appellant's statement of reasons on appeal, consisting of a single page, has been presented in some detail above to show that it omits all mention of BLM's negative finding regarding the unit's outstanding opportunities for either solitude or a primitive and unconfined type of recreation. BLM's finding that the unit lacks such outstanding opportunities is a good and sufficient reason to reject the unit from further wilderness review. Appellant's statement of reasons fails to point out any error in the State Director's decision as to such issue.

A second examination of appellant's protest reveals that its argument in favor of the unit's outstanding opportunities for solitude or a primitive and unconfined type of recreation was largely a quotation from BLM's narrative for the unit (Final Intensive Inventory, p. 29). Hence, neither the protest nor the statement of reasons has provided BLM with any affirmative statement pointing out errors in its finding

^{1/} Judge Stuebing wishes to note that appellant's reference to "the trespass nature of the road" may be presumptuous in light of 43 U.S.C. § 932 (1970), repealed by Federal Land Policy and Management Act of 1976. See Homer D. Meeds, 26 IBLA 281, 83 I.D. 315 (1976).

regarding the unit's lack of outstanding opportunities. Appellant's protest and appeal amount to little more than simple disagreement with BLM's conclusions. More than this is required to reverse BLM's decision or place a factual matter at issue. A statement of reasons which merely contains broadside assertions and does not point out affirmatively in what respect the decision appealed from is in error may be dismissed. Duncan Miller, 26 IBLA 37 (1976). Even assuming the resolution of the rehabilitation and size issues in appellant's favor, its failure to point out error in BLM's finding regarding the unit's lack of outstanding opportunities for solitude or a primitive and unconfined type of recreation is fatal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

